

SERVICE DATE – APRIL 13, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42141

NATIONAL RAILROAD PASSENGER CORPORATION—INVESTIGATION OF
SUBSTANDARD PERFORMANCE OF THE CAPITOL LIMITED

Digest:¹ This decision dismisses without prejudice the National Railroad Passenger Corporation's complaint requesting that the Board initiate an investigation of alleged substandard performance of the Capitol Limited service on the lines of CSX Transportation, Inc., and Norfolk Southern Railway Company, between Chicago, Ill., and Washington, D.C.

Decided: April 12, 2018

By complaint filed on November 17, 2014, as amended on November 19, 2014, the National Railroad Passenger Corporation (Amtrak) requested that the Board initiate an investigation pursuant to 49 U.S.C. § 24308(f) of alleged substandard performance of Amtrak's Capitol Limited service between Chicago, Ill., and Washington, D.C. Amtrak alleges in its complaint that the on-time performance of the Capitol Limited service, which operates over tracks of CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR), has averaged less than 80% for two consecutive calendar quarters.

On January 7, 2015, CSXT and NSR each filed a response to Amtrak's complaint along with a motion to dismiss, to which Amtrak responded. The motions to dismiss focused on the fact that the metrics and standards developed pursuant to section 207 of the Passenger Rail Investment & Improvement Act (PRIIA), Pub. L. No. 110-432, Div. B, 122 Stat. 4907 (2008), which govern on-time performance and would be applied to the case, had been invalidated in court. The matter was later held in abeyance due to a series of legal challenges relating to section 213 of PRIIA.² The most recent court decision invalidating the section 207 metrics and

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Litigation ensued following the Board's adoption of final rules relating to on-time performance for purposes of section 213, which governs Board investigations of on-time performance. The Board's final rules were ultimately vacated by the U.S. Court of Appeals for the Eighth Circuit. See Union Pac. R.R. v. STB, 863 F.3d 816, 825-26 (8th Cir. 2017). The U.S. Supreme Court recently denied petitions for certiorari. See Nat'l R.R. Passenger Corp. v. Union Pac. R.R., No. 17-699, slip op. at 1 (U.S. Feb. 20, 2018); Nat'l Ass'n of R.R. Passengers v. Union Pac. R.R., No. 17-714, slip op. at 1 (U.S. Feb. 20, 2018).

standards is now on appeal. See Ass'n of Am. R.R.s v. Dep't of Transp., No. 17-5123 (D.C. Cir. argued Feb. 22, 2018).

On September 1, 2017, and October 13, 2017, NSR and CSXT respectively filed letters asking the Board to grant NSR's and CSXT's pending motions to dismiss. Following various extensions of time to reply, Amtrak filed a letter with the Board on March 5, 2018, essentially stating that Amtrak does not oppose the requests filed by NSR and CSXT as long as the Board's action is without prejudice to any right Amtrak may have to refile its complaint in the future. (See Amtrak Letter 1, Mar. 5, 2018.)

Given Amtrak's letter-response, the Board will grant NSR's and CSXT's motions to dismiss without prejudice.

It is ordered:

1. CSXT's and NSR's motions to dismiss are granted. Amtrak's complaint is dismissed without prejudice to any right Amtrak may have to refile its complaint in the future.
2. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.